

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO A. VALENZUELA,

Plaintiff,

v.

T. SCHMIDT, et al.,

Defendants.

No. 2:22-cv-01109 DB P

ORDER

Plaintiff, a state prisoner, filed this civil rights action seeking relief under 42 U.S.C. § 1983. Plaintiff alleges an unconstitutionally excessive use of force by prison officials at California State Prison in Sacramento, California. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Defendants have filed an unopposed motion to stay the proceedings in this case. (ECF No. 26.) In the alternative, defendants request an extension of time to conduct discovery. (Id.) For the reasons set forth below, the motion to stay is granted.

**I. Procedural Background and Motion to Stay**

In the complaint filed on June 27, 2022, plaintiff alleges he was assaulted on March 24, 2020, during an emergency cell extraction. (ECF No. 1.) Officer T. Schmidt, E. Thompson, and G. Meyers used their batons to hit plaintiff on the back of his head and face while he was

1 handcuffed and face down on the bed. (Id.) Sgt. Partham stood by and allowed the assault to  
2 happen. (Id.)

3 Plaintiff is being prosecuted for criminal offenses related to the incident that occurred on  
4 March 24, 2020. The court takes judicial notice of the existence of plaintiff's criminal case,  
5 number 21FE015762, pending in the Sacramento County Superior Court. See Rule 201, Fed. R.  
6 Evid.; United States v. Raygoza-Garcia, 902 F.3d 994, 1001 (9th Cir. 2018) (a court may take  
7 judicial notice of undisputed matters of public record, which may include court records).

8 On August 16, 2023, defendants moved to stay this case pending resolution of  
9 plaintiff's criminal case. (ECF No. 18.) Plaintiff did not oppose the motion. On November 3,  
10 2023, the court denied the first motion to stay without prejudice to renewal. (ECF No. 23.)

11 Defendants answered the complaint on November 21, 2023. (ECF No. 24.) On December  
12 5, 2023, the court issued a discovery and scheduling order setting the discovery cut-off date for  
13 April 8, 2024, and setting a deadline of June 28, 2024, for filing all other pretrial motions. (ECF  
14 No. 25 at 5-6.)

15 On March 22, 2024, defendants attempted to take plaintiff's deposition. (See ECF No. 26  
16 at ¶ 6.) Plaintiff invoked his Fifth Amendment right against self-incrimination. The defendants  
17 subsequently suspended the deposition. (Id.)

18 On April 12, 2024, plaintiff entered a plea of not guilty in criminal case number  
19 21FE015762. Plaintiff's criminal case is currently set for a preliminary hearing to take place on  
20 June 21, 2024.

21 In the motion presently before the court, defendants seek to stay this case pending  
22 resolution of plaintiff's criminal trial. If the court denies the stay, then defendants alternately  
23 request an extension of time to conduct discovery and to bring any discovery related motions.

## 24 **II. Legal Standard**

25 In the absence of substantial prejudice to the rights of the parties involved, simultaneous  
26 parallel civil and criminal proceedings are unobjectionable. Keating v. Office of Thrift  
27 Supervision, 45 F.3d 322, 324 (9th Cir. 1995). "Nevertheless, a court may decide in its discretion

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1 to stay civil proceedings ... when the interests of justice seem [ ] to require such action.” Id.  
 2 (alterations in original) (citations and internal quotation marks omitted).

3 The decision whether to stay a civil proceeding in the face of a parallel criminal  
 4 proceeding is made according to the particular circumstances of the case and considers the  
 5 competing interests involved in the case. Keating, 45 F.3d at 324-25. Relevant considerations  
 6 may include the extent to which the criminal defendant’s Fifth Amendment rights are implicated,  
 7 and five further factors (“further Keating factors”): “(1) the interest of the plaintiffs in proceeding  
 8 expeditiously with this litigation or any particular aspect of it, and the potential prejudice to  
 9 plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on  
 10 defendants; (3) the convenience of the court in the management of its cases, and the efficient use  
 11 of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the  
 12 interest of the public in the pending civil and criminal litigation.” Id. (citations and internal  
 13 quotation marks omitted).

### 14 **III. Discussion**

15 Given the factual overlap between the criminal case and the civil case, plaintiff’s Fifth  
 16 Amendment rights are implicated because any discovery or testimony provided in this case could  
 17 potentially be used against plaintiff in the criminal case. See ESG Capital Partners LP v. Statos,  
 18 22 F.Supp.3d 1042, 1046 (C.D. Cal. 2014) (Fifth Amendment is implicated when parallel  
 19 proceedings are “based on the same set of facts”). When defendants deposed plaintiff and asked  
 20 questions related to the incident, plaintiff invoked his right against self-incrimination to avoid  
 21 answering those questions. In addition, plaintiff has informed defendants’ counsel he will  
 22 continue to assert his Fifth Amendment right if deposed again before the conclusion of his  
 23 criminal prosecution. (See ECF No. 26 at ¶ 6.)

24 “A [criminal] defendant has no absolute right not to be forced to choose between  
 25 testifying in a civil matter and asserting his Fifth Amendment privilege[.]” Keating, 45 F.3d at  
 26 325-26. Thus, the implication of Fifth Amendment rights does not compel a stay of a civil case  
 27 pending the outcome of a related criminal case. ESG Cap. Partners LP, 22 F. Supp. 3d at 1046  
 28 (citing Keating, 45 F.3d at 326.) Nevertheless, the fact that plaintiff’s Fifth Amendment rights are

1 implicated weighs in favor of a stay. In addition, the potential burden on defendants and efficient  
2 use of judicial resources both weigh in favor of a stay at this time. It appears defendants may be  
3 hampered from obtaining meaningful discovery so long as plaintiff's criminal case remains  
4 pending. Staying the case also promotes judicial economy by mitigating the potential for  
5 burdensome motion practice on discovery matters.

6 Plaintiff does not oppose the motion to stay, and there is no indication plaintiff would  
7 suffer undue prejudice from a stay. No third-party interests appear to be implicated. Considering  
8 the potential impact on plaintiff's Fifth Amendment rights along with the further Keating factors,  
9 the interests of justice require this action to be stayed at this time.

10 **IV. Conclusion**

11 For the reasons set forth above, IT IS HEREBY ORDERED as follows:

- 12 1. Defendant's motion to stay (ECF No. 26) is GRANTED.
- 13 2. The instant action is STAYED pending resolution of plaintiff's criminal case.
- 14 3. Defendants SHALL file a status report within ninety (90) days from the date of  
15 service of this order, and every ninety (90) days thereafter, addressing the status of the criminal  
16 proceedings until those proceedings are resolved.

17 Dated: April 23, 2024

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20 DEBORAH BARNES  
21 UNITED STATES MAGISTRATE JUDGE

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